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Section 1 Definitions.

As used in all Sections:

1. "Crossing" means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right of way by a utility. The term includes the construction, operation, repair, or maintenance of a facility that runs adjacent to and alongside the lines of a railroad in a railroad right of way for no more than one mile, or another distance agreed to by the parties, after which the facility crosses the railroad lines, terminates, or exits the railroad right of way. ~~The term does not include longitudinal occupancy of a railroad right of way that exceeds one mile.~~
2. "Disused Rail Crossing" means any crossing as defined in Section 1, Subsection 1, which meet at least one of the following additional criteria:
 - a. The railroad line of the crossing has been classified as "inactive" by a state or federal agency such as the Montana Department of Transportation or the Surface Transportation Board;
 - b. The railroad line of the crossing has been used solely for the storage of railcars for a period of not less than ninety days;
 - c. The railroad line of the crossing carries not more than one percent of the railroad line capacity over a twelve-month period;
 - d. The railroad line of the crossing is not capable of safe or regular rail operation due to neglect, lack of required rail facilities, or the long-term removal of ties or track; or
 - e. The railroad line of the crossing has been abandoned.
3. "Facility" means any item of personal property including:
 - a. Pipes;
 - b. Sewers;
 - c. Conduits;
 - d. Cables;
 - e. Valves;
 - f. Lines;
 - g. Wires;
 - h. Manholes; and
 - i. Attachments;placed over, across, or under a railroad right of way for use in connection with the storage or conveyance of:
 - i. Water;
 - ii. Sewage;
 - iii. Electronic, telephone, data, or telegraphic communications;
 - iv. Fiber optics;
 - v. Cablevision;
 - vi. Electric energy;
 - vii. Liquid hydrocarbons;
 - viii. Gas; and
 - ix. Hazardous liquids; ~~or~~
 - x. ~~Other substances, including pipes, sewers, conduits, cables, valves, lines, wires, manholes, or attachments.~~
4. "Railroad" means any association or corporation or other entity engaged in operating a common carrier by rail or any other entity responsible for the management of crossings or collection of crossing fees.
5. "Special circumstances" includes the railroad crossing's relationship to other property, location of the crossing in urban or other developed areas, the existence of unique topography or natural resources, or other dangers inherent in the particular crossing.

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6. "Utility" means a public or cooperative utility, transmission company, gas utility, municipal utility, municipal power utility, municipality, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable, or fiber optic provider. The term includes contractors and agents hired by a utility.

Section 2 Right of utilities to cross over or under railroad right of way.

A utility may cross over or under the railroad right of way for the placement of facilities, subject to payment of the crossing fee in Section 5, and reasonable regulation, and negotiation in good faith as to location, placement, and compensation, when the placement of facilities is outside the public right of way. Any crossing located inside the public right of way does not require approval from a railroad entity. Section 2 applies to any new or expired agreement. All existing utility easements and eminent domain agreements shall be preserved under these provisions.

Section 3 Notice and application for placement.

1. A utility that intends to place a facility across a railroad right of way shall provide notice of the placement to the railroad at least thirty days before the placement.
2. The notice must include a completed crossing application, including a drawing showing the location of the proposed crossing and the railroad's property, tracks, and wires the utility will cross.
3. The utility shall submit the crossing application on a form approved by the railroad, or provided by the railroad, if available and made available to utilities within thirty days of application submission.
4. The crossing application must be sent to the railroad by registered mail.
5. The application must be accompanied by the crossing fee in Section 5, and a certificate of insurance as required in Section 6.
6. Construction of a crossing may commence thirty days after the receipt of the submission of notice, completed application, crossing fee, and certificate of insurance except as provided for in Section 4.

Section 4 Commencement of construction across railroad right of way.

Thirty-five days after the receipt by the railroad of the submission of notice, completed crossing application, crossing fee, and certificate of insurance, the utility may commence the construction of the crossing, unless the railroad notifies the utility in writing that the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right of way. In all other instances, the utility is deemed to have authorization to commence construction of the facility.

Section 5 Crossing fee - Flagging expense.

1. Unless otherwise agreed by the parties, a utility that crosses a railroad right of way, other than a crossing within the public right of way or within a utility easement, shall pay the railroad a one-time, standard crossing fee of seven hundred fifty dollars for each crossing. The one-time crossing fee amount may be altered if agreed to by the utility and railroad prior to the start of crossing construction.
2. The crossing fee is a lifetime fee and shall not expire for the duration of a crossing's existence.
3. The crossing fee shall not be charged for the replacement or upgrading of existing crossing facilities.
4. The crossing fee is in lieu of any license, permit, application, processing fee, or any other fees or charges to reimburse the railroad for the direct expenses or diminution of land value incurred by the railroad as a result of the crossing.

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5. The crossing fee does not vary according to the length of the facility, and may not be charged for a facility which is not located on railroad right of way.
6. No other fee, tax, or financial charge may be assessed by the railroad or by any railroad agent, contractor, or assignee to the utility or to any agent or contractor of the utility.
7. A crossing fee is not required if the crossing is located within a public right of way.
8. A crossing fee is not required for disused rail crossings as defined in Section 1, Subsection 2.
9. A crossing fee is not required for crossing railroad-owned structures or facilities located outside a railroad track right of way.
10. In addition to the standard crossing fee and based on the railroad traffic at the crossing, a utility shall reimburse the railroad for ~~any reasonable and necessary flagging,~~ inspection, and other expenses associated with a crossing. All necessary fees payable by a utility shall not exceed \$750.
11. If the railroad alleges a crossing will cause a diminution in land value in an amount greater than the crossing fee provided in Section 5, Subsection 1, the railroad shall notify the utility and provide a certified appraisal demonstrating the diminution in value of the entire parcel of railroad property caused by the crossing before the date for commencement of construction provided in Section 4.
12. If the parties are unable to resolve the issue of compensation under Subsection 6, the dispute must be resolved in accordance with Section 8.
13. The placement of a single conduit and its content is a single facility. No additional fees, tax, or financial charges are payable based on the individual fibers, wires, lines, or other items contained within the conduit.

Section 6 Certificate of insurance or coverage.

1. The certificate of insurance or coverage submitted by a municipality must include commercial general liability insurance or equivalent form with a limit of not less than one million dollars for each occurrence and an aggregate of not less than two million dollars.
2. The certificate of insurance or coverage submitted by any other utility other than a gas and hazardous materials pipeline utility must include commercial general liability insurance or an equivalent form with a limit of not less than two million dollars for each occurrence and an aggregate limit of not less than five million dollars.
3. The certificate of insurance submitted by a gas or hazardous materials pipeline utility must include commercial general liability insurance with a combined single limit of a minimum of five million dollars for each occurrence and an aggregate limit of at least ten million dollars.
4. The railroad may require protective liability insurance with a combined single limit of not less than two million dollars for each occurrence and an aggregate limit of not less than five million dollars. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual crossing.
5. The coverage is required only during the period of construction, repair, or replacement of the facility.
6. The insurance obligations required under this Section may be satisfied by the utility using any combination of primary, excess, or self-insurance. The insurance may not contain an exclusion or limitation related to railroads.

Section 7 Notice of objection by railroad - Appeal.

1. If a railroad objects to the proposed crossing due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right of way, the

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153 railroad shall provide notice of the objection and the specific basis of the objection to the
154 utility by registered mail.

- 155 2. If the parties are unable to resolve the objection, either party may ~~petition the~~
156 ~~commission~~ submit to arbitration in accordance with MCA Title 27, Chapter 5 for
157 resolution of the disputed crossing application within thirty days from receipt of the
158 objection.
- 159 3. Before ~~filing a petition~~ submitting to arbitration, the parties shall confer in good faith in an
160 attempt to resolve the objection.
- 161 4. If a ~~petition~~ arbitration is filed sought, the ~~commission~~ arbitrators shall issue a notice of
162 hearing or notice of opportunity for hearing within fifteen days of filing of ~~the petition for~~
163 arbitration, and shall issue an order within thirty days after the hearing or, if a hearing is
164 not held, after expiration of the period during which a hearing could be requested, during
165 which time the crossing must be stayed. The order may be appealed in accordance with
166 MCA Title 25. The ~~commission~~ arbitrators shall assess ~~its~~ their costs associated with a
167 petition arbitration equitably against the parties. The parties shall pay the costs within
168 thirty days after receipt of a bill for payment from the ~~commission~~ arbitrators. Amounts
169 collected by the ~~commission~~ under this Subsection must be deposited in a special
170 account ~~within the commission~~.

171 172 **Section 8 Additional requirements imposed by railroad - Objection and arbitration** 173 **petition to Commission.**

- 174 1. If, in writing by registered mail, a railroad asserts special circumstances exist, other than
175 the proposed crossing being a serious threat to the safe operations of the railroad or to
176 the current use of the railroad right of way, or imposes additional requirements on a
177 utility for crossing its lines, the utility may object to one or more of the requirements.
- 178 2. If a utility objects under Subsection 1, the utility shall provide notice of the objection and
179 the specific basis of the objection to the railroad by registered mail.
- 180 3. If the parties are unable to resolve the objection, either party may ~~petition the~~
181 ~~commission~~ submit to arbitration in accordance with MCA Title 27, Chapter 5 for
182 resolution of the objection within thirty days from receipt of the objection.
- 183 4. Before ~~filing a petition~~ submitting to arbitration, the parties shall confer in good faith in an
184 attempt to resolve the objection.
- 185 5. If a ~~petition~~ arbitration is filed sought, the ~~commission~~ arbitrators shall issue a notice of
186 hearing or notice of opportunity for hearing within fifteen days after the filing of ~~the~~
187 petition for arbitration, and shall determine, within thirty days after the hearing or, if a
188 hearing is not held, after expiration of the period during which a hearing could be
189 requested, whether special circumstances exist which necessitate additional
190 requirements for the placement of the crossing. The order may be appealed in
191 accordance with MCA Title 25. The ~~commission~~ arbitrators shall assess ~~its~~ their costs
192 associated with a petition arbitration equitably against the parties. The parties shall pay
193 the costs within thirty days after receipt of a bill for payment from the ~~commission~~
194 arbitrators. Amounts ~~collected by the commission under this Subsection~~ must be
195 deposited in a ~~special account within the commission~~.

196 197 **Section 9 Operational relocation.**

- 198 1. A railroad may require a utility to relocate a facility if the railroad determines relocation is
199 essential to accommodate railroad operations, and the relocation is not arbitrary or
200 unreasonable. Before agreeing to the relocation, a utility may require a railroad to
201 provide a statement and supporting documentation identifying the operational necessity
202 for requesting the relocation. A utility shall perform the relocation within a reasonable
203 period of time following the agreement.

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2. If a utility objects to the necessity of relocation under Subsection 1 after reviewing the statement and supporting documentation, the utility shall provide notice of the objection and the specific basis of the objection to the railroad by registered mail.
3. If the parties are unable to resolve the objection, either party may submit to arbitration in accordance with MCA Title 27, Chapter 5 for resolution of the objection within thirty days from receipt of the objection.
4. Before filing a petition, the parties shall confer in good faith in an attempt to resolve the objection.
5. If arbitration is sought, the arbitrators shall issue a notice of hearing or notice of opportunity for hearing within fifteen days after the filing for arbitration, and shall determine, within thirty days after the hearing or, if a hearing is not held, after expiration of the period during which a hearing could be requested, whether special circumstances exist which necessitate additional requirements for the placement of the crossing. The order may be appealed in accordance with MCA Title 25. The arbitrators shall assess its costs associated with arbitration equitably against the parties. The parties shall pay the costs within thirty days after receipt of a bill for payment from the arbitrators.
6. The relocation must be to a location mutually agreed upon by the railroad and utility, within the railroad right of way.
7. Relocation is at the expense of the utility. The crossing fee under Section 5 may not be imposed for on the relocation relocated crossing.

Section 10 Removal of equipment.

Upon completion of any facility, the utility shall remove, or cause to be removed, all tools, equipment, or other property used in the construction of the facility and, if railroad property was moved or disturbed, restore that property to the condition of the property before being moved or disturbed.

Section 11 Assignment.

1. A utility may assign or otherwise transfer any rights to cross a railroad right of way to any financially responsible entity controlled by, controlling, or under common control of the utility or to any entity into or with which the utility is merged or consolidated or which acquires ownership or control of all or substantially all of the transmission assets of the utility.
2. Notice of the assignment or transfer must be given to the railroad within thirty days. Any other transfer or assignment may not take place without the written permission of the railroad, which permission may not be unreasonably withheld.

Section 12 Prohibition against mechanic's liens.

1. A utility may not create, permit, or cause a mechanic's lien or other lien to be created or enforced against the railroad's property for any work performed by the utility in connection with the utility's facilities located in the railroad's right of way.
2. A railroad may not create, permit, or suffer a mechanic's lien or other lien of any kind or any nature to be created or enforced against a utility's property located in the railroad's right of way for any work performed by the railroad in connection with the railroad's facilities.

Section 13 Taxes.

A utility promptly shall pay or discharge all taxes and charges levied upon the utility's facilities located in the railroad's right of way. If any taxes or charges cannot be separately made or assessed to the utility, but are included in the taxes or charges assessed to the railroad, the utility shall pay to the railroad an equitable portion of the taxes, determined by the value of the

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utility's facilities located on the railroad right of way as compared with the entire value of the railroad property.

Section 14 Existing agreements - Eminent domain.

1. This agreement does not prevent a railroad and a utility from continuing under an existing agreement or otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing.
2. This agreement does not impair the existing authority of a utility to secure crossing rights by easement or through the power of eminent domain in accordance with Title 70, chapter 30.

Application.

This agreement applies to any:

1. Crossing existing before August 1, 2019, if an agreement concerning the crossing has expired or is terminated. In such instance, if the collective amount of seven hundred fifty dollars has been paid to the railroad during the existence of the crossing, no additional fees are required; and
2. Crossing commenced after July 31, 2019.